or ownership of the goods, such name may become exclusive. *El Modelo Cigar Co.* v. *Gato* (1890), 25 Fla. 886, 7 So. 23; *La Republique Francaise* v. *Saratoga Vichy Springs Co.* (1901), 107 Fed. 459, 65 L. R. A. 830. Also where the defendant is guilty of deception, as where he does not live or produce his goods in the place named, injunction may be granted. *Bissell Chilled Plow Works* v. *T. M. Bissell Plow Co.* (1902), 121 Fed. 357. In *Waltham Watch Co.* v. *United States Watch Co.* (1899), 173 Mass. 85, 53 N. E. 141, injunction was allowed the plaintiffs who had used a geographical name to identify their watches, on the ground that the use of the name had led to a secondary meaning with relation to the goods. Where such secondary meaning is found to exist, a remedy under the doctrine of unfair competition may be had. *La Republique Francaise* v. *Saratoga Vichy Springs Co., supra.*

In the present case, it was found that the word "Tabasco" had, by long use, become identified with the goods sold by the plaintiff so that the public relied upon the name as the plaintiff's manufacture. Also, that the defendant's act took advantage of the plaintiff's commercial reputation. Such an act would be in effect a fraud upon the plaintiff's customers. It is said by Justice Holmes, "The name of a person or a town may have become so associated with a particular product that the mere attaching of that name to a similar product, without more, would have all the effect of a falsehood." *Herring-Hall-Marvin Safe Co.* v. *Hall's Safe Co.* (1908), 208 U. S. 554. See also *Walter Baker & Co.* v. *Slack* (1904), 130 Fed. 514. The rights of both parties may be reconciled by allowing the use of the name, provided an explanation is attached in clear and unmistakable terms. *Singer Manufacturing Co.* v. *June Manufacturing Co.* (1896), 163 U. S. 169.

The decision in the instant case seems in accord with the authorities and with the principles of equity.

WILLS—STATEMENT MADE BY DECEDENT, ABOUT TO EMBARK FOR THE WAR IN EUROPE, HELD ADMISSIBLE AS NUNCUPATIVE WILL.—A statement was made by the decedent, a soldier, while embarking with his regiment for service overseas that, "if anything should happen to me on the other side, I want Carl to have everything". *Held*, statement admissible as valid nuncupative will. *In re Stein's Will* (1922), 194 N. Y. S. 909.

The English Statute of Frauds, 29 Car. 2. C. 3, exempted soldiers in "actual military service, or any mariner or seaman being at sea", from the restriction imposed by that act upon the disposition of personalty by devise.

In America the majority of the States have adopted the wording of the English statute, and permit the disposition of personalty by soldiers in "actual military service", or sailors at sea, by the methods recognized by the common law before the passage of 29 Car. 2, and among others, by nuncupative wills. *Leathers* v. *Greenacre* (1866), 53 Me. 561; *Van Deuzer* v. *Gordon's Estate* (1866), 39 Vt. 111; *Gould et als.* v. *Safford's Estate* (1866), 39 Vt. 498.

The rule of construction prevailing in England as to the meaning of the statute appears to be consistently followed in this country. Thus the following have been held to be in "actual military service": A soldier

encamped in a hostile country, though in winter quarters, *Leathers* v. *Greenacre, supra;* in a hospital in proximity to the enemy, *Gould* v. *Safford's Estate, supra;* but, *contra* when at home on furlough, or in permanent quarters during a war. *Van Deuzer* v. *Gordon's Estate, supra.*

There seems to be no American case decisive of the status of a soldier about to embark on a transport for a distant theatre of war.

Under the conditions of submarine warfare prevailing in 1917, and in the light of the strong English decisions on this exact point, *Stopford* v. *Stopford* (1903), 19 Times L. R. 185; *Cory's Goods* (1901), L. T. N. S. 270; *Gordon's Goods* (1905), 2 Times L. R. 653, and in view of the fact that from the days of the Civil Law, soldiers in actual service have been granted testamentary privileges wholly unknown to the average citizen, the instant decision seems eminently sound. *In re O'Connor's Will* (1909), 65 Misc. Rep. 403, 121 N. Y. S. 903.

In Virginia, CODE 1919, § 5231 is historically parallel with the statutes governing in the majority of the States and in England. A recent decision indicates that the court will go to the furthest extent in applying the presumption of testamentary intent to the words, spoken or written, of one of this privileged class of "soldiers in actual service". The law considers this presumption justifiable due to the dangers surrounding the testator, and consequently courts will give effect to expressions as testamentary in character, which in the mouth or writing of a civilian, would be no more than evidence of intent. *Rice* v. *Freeland* (Va. 1921), 109 S. E. 186.